



MICHELLE L. JOHNSON
ZYMOGENETICS INC.
1201 EASTLAKE AVENUE
SEATTLE, WA 98102

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In re Application of
Theresa A. Deisher et al.
Application No. 10/081,347
Filed: February 21, 2002
Attorney Docket No. 96-20C5

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition, filed April 7, 2006, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on June 16, 2005, for failure to file a timely response to the non-Final Office Action mailed March 15, 2005. A response was filed September 15, 2005 with a three month extension of time request. However, an Office communication (notification of non-responsive but *bona fide* reply) mailed September 23, 2005 advised that the amendment was non-responsive. The period for reply ran from the mailing of the Office communication mailed June 16, 2005 and was only subject to be extended pursuant to 37 CFR 1.136 to three months from the statutory reply date. Since a three month extension of time had already been requested, no additional extensions were allowable and in view of the non-responsive amendment filed, the application became abandoned. The instant petition and this decision precede the mailing of the Notice of Abandonment.

The application is being forwarded to Technology Center 1647 for consideration of the response filed April 7, 2006 and for further examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).